IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 477 of 2007.

Decided on: 10.08.2007.

Shri Jeet Singh. … … Petitioner.

Versus

The Secretary, H.P.S.E.B. and Another. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner: **Mr. V.B. Verma, Advocate vice Mr. Vikas Rathore, Advocate.**

For the Respondents: **Mr. Shrawan Dogra, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid by the petitioner (hereinafter referred to as the workman for the convenience sake) to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala dated 27.4.2006 in reference No.404/2002.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:-

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[1] *Whether reporters of local papers may be allowed to see the judgment? No.*

"Whether the termination of services of Sh. Jeet Singh S/o Sh. Chuni Lal, daily wages beldar by Executive Engineer, H.P. State Electricity Board Division, Joginder Nagar, Distt. Mandi, (H.P.) w.e.f. 1.4.2000 after completion of more than 240 days, as alleged by the workman without complying the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, what relief, service benefits and amount of compensation the aggrieved workman is entitled to?"

The workman had also served a demand notice on the employer on 6.12.2001. He had stated in his notice that he was engaged as daily wages beldar in the year 1999 and had worked in the same capacity upto to 31st March, 2000, but his services have been terminated without following the mandatory provisions of law. He had specifically mentioned in his demand notice that the principle of 'last come first go" had also been violated by the employer by retaining one Shri Ghanshyam Singh who was junior to him at the time of his retrenchment.

The workman had also filed the statement of claim before the Labour Court. The workman had stated in the statement of claim that three workmen, namely, S/Shri Safi Ahmad, Durga Dass and Gian Chand were still working though junior to him, but retained by the employer. He had also averred in his statement of claim that the employer had violated the provisions of sub-clause (2) of Clause 14 of the Certified Standing Orders framed by the Board for its employees. The Labour Court had answered the reference in the negative on 17th April, 2006.

Mr. V.B. Verma appearing vice Mr. Vikas Rathore had strenuously argued that the award dated 27th April, 2006 is not sustainable in the eyes of law. Mr. Shrawan Dogra had supported the award dated 27th April, 2006.

I have heard the learned counsel for the parties and perused the record.

The workman was engaged with effect from 1st March, 2000 to 31st March, 2000 as per man-days chart annexed by the employer. Admittedly, the Standing Orders framed by the H.P.S.E.B. had ceased to apply after 22.8.1992 framed under the Industrial Employment (Standing Orders) Act, 1946. Thus, the workman was not entitled to the protection of sub-clause (2) of Clause 14 of the Certified Standing Orders framed by the Board. The Labour Court however had not taken into consideration the plea of the workman that he was entitled to the protection of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) even though he had not completed 240 days. In his demand notice he had given the name of one Shri Ghanshyam Singh who was junior to him. In his statement of claim, the workman had given the names of three persons who were junior to him, but retained by the employer at the time of terminating his services. The names mentioned by the workman in his statement of claim of the junior persons were S/Shri Safi Ahmed, Durga Dass and Gian Chand. The Labour Court had not gone into the issue whether the workman was entitled to the protection of Section 25-G of the Act or not, in detail. The Labour

Court had only made observation that cogent documentary evidence was required to be adduced by the workman. The workman had given the names of the workmen who were junior to him. This aspect has not been looked into by the Labour Court. The Labour Court was required to give positive findings on the basis of the evidence led by the parties with regard to protection of Section 25-G of the Act.

Accordingly, the writ petition is allowed. The award dated 27th April, 2006 is quashed and set aside. The Labour Court-cum-Industrial Tribunal, Dharamshala is directed to hear the parties on the question of applicability of Section 25-G after permitting the parties to lead their respective evidence, oral as well as documentary. The Labour Court is directed to decide the matter within a period of three months from today. To avoid delay, the parties are directed to make themselves available before the Labour Court on 27th August, 2007. No order as to costs.

(Rajiv Sharma) Judge.

August 10, 2007.
(sck)